

September 16, 1932.

Pursuant to adjournment taken September 12, 1932, the City Council met at 8 o'clock P.M., Councilmen Clark, Keagle, Spooner and Weihe present, Mayor Steele absent.

On motion of Councilman Clark, Keagle second, Councilman Spooner was chosen Mayor pro-tem and opened the meeting.

Mr Robert M. Searls of Council for the City in the East Bay and Pacific Gas Company case appeared at 9.10 o'clock P.M. and outlined the City's case as it would be presented, stating that the offer in equity contained in Resolution No. 622 adopted October 20, 1930 should be withdrawn and another offer substituted therefore. This meeting the pleasure of the City Council, Mr Searls was authorized to make the following offer as embodied in Resolution No. 669 :-

RESOLUTION No. 669

WHEREAS, the case of City of Lodi, plaintiff vs East Bay Municipal Utility District and Pacific Gas & Electric Company, defendants, will come to trial in the Superior Court of San Joaquin County at Stockton on September 19, 1932;

AND, WHEREAS, prior hereto, viz, on the 20th day of October, 1930, this City did make an offer to allow these same defendants the rights to operate their respective plants under limitations thought to save other riparian owners and appropriators from serious injury or damage, which offer was rejected by both of said defendants;

NOW, THEREFORE, this City Council hereby withdraws its offer aforesaid and hereby directs that all and any offers contained in its Resolution No. 622, adopted October 20, 1930 be, and the same are hereby declared null, void and of no effect and not to be considered in the action now pending;

In lieu of the offer or offers contained in the said Resolution No. 622, and as further evidence of its disposition to

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have a just and equitable division of the waters of the Mokelumne River made at this time, this City Council now tenders the following offer to do equity with the sincere hope that it may lead to a settlement of the matters at issue without harm to either of said defendants and will protect and insure this City from any further invasion of its rights to the domestic water supply of its inhabitants :

OFFER BY THE CITY OF LODI TO DO EQUITY.

In view of the fact that the East Bay Municipal Utility District and Pacific Gas and Electric Company have constructed extensive works on the Mokelumne River notwithstanding the pendency of this action, and are devoting waters of the Mokelumne River to the respective uses of the Public served by the Pacific Gas and Electric Company and the inhabitants of the East Bay Municipal Utility District; the City of Lodi makes the following offer to do equity in the present case:

First. Upon acceptance of the conditions hereinafter expressed and embodiment of the same in the form of a judgement and decree, the City of Lodi will consent that the Pacific Gas and Electric Company appropriate, store and utilize the waters of the North Fork of the Mokelumne River and its tributaries involved in the power projects of said corporation covered by Water Division permits numbered 2100, 2101, 2102, 3188, 3189, 3190, 3303 and 3452 to the extent authorized by said permits, except as herein modified.

Second: The Pacific Gas and Electric Company shall maintain the schedule of water releases provided for in the judgement of the Superior Court of Calaveras County in case number 1591, in which Colorado Power Company, predecessor in interest of City of Lodi, is plaintiff and Pacific Gas and Electric Company is defendant, and the water released from the tailrace of the Electra plant in conformity with the said schedule shall be adjudicated to be a part of the flow of the Mokelumne River subject to the same riparian rights, appropriative rights, and overlying landowners' rights as would characterize such water in its unregulated condition.

Third. The City of Lodi will consent to the operation of the project of the East Bay Municipal Utility District to the extent covered by Water Division permits numbered 2459, 2529, 3587 and 3607, involving a diversion into storage of 217,000 acre feet of water per annum for municipal purposes, a direct progressive diversion of 310 second feet of water from the Mokelumne River at Pardee Dam to the East Bay cities for domestic and municipal uses, and a diversion into storage of 317,000 acre feet of water per annum, and a direct diversion of 750 second feet of natural flow for generation of power at Pardee Power House, such storage and diversions by the East Bay Municipal Utility District to be subject to the mandatory releases hereinafter specified.

Fourth. Pacific Gas and Electric Company and East Bay Municipal Utility District shall jointly contribute to the cost of construction of 40,000 acre feet of reservoir capacity at the Mehrton Reservoir site on the Mokelumne River. To that end Pacific Gas and Electric Company will convey without charge lands it now owns in said site to a Trustee to be designated by the Court and the East Bay Municipal Utility District will acquire the additional lands and easements necessary for the construction and operation of five collapsible dams, as hereinafter described, and convey or cause the same to be conveyed to said Trustee.

Fifth. Pacific Gas and Electric Company and East Bay Municipal Utility District will construct or cause to be constructed, or will provide for the construction in the channel of the Mokelumne River between Woodbridge Dam and Mehrton Reservoir site at points to be approved by the engineers of the

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(minutes of Sept. 16, 1932-continued)

City of Lodi, of five collapsible dams, which, together with said Mehrton Reservoir, will be operated and maintained by the Trustee for the purpose of ponding said stream and maintaining a head of water which will flush its channel and result in percolation into the soil underlying the City of Lodi to an amount of water equivalent to that which would so percolate under natural conditions.

Sixth. The East Bay Municipal District will release, and shall by judgement and decree herein be required to release into the Mokelumne River at and below Pardee Dam sufficient water to keep filled the series of ponds to be created by said collapsible dams, and in addition thereto, to release between November first of each year and May first of the following year at and below Pardee Dam, 40,000 acre feet of water for storage in said Mehrton Reservoir and subsequent use by said Trustee in flushing the channel of the Mokelumne River so as to maintain normal rate of percolation into the adjacent soil; provided that the total amount of water required to be released in any year for such purposes shall not exceed 140,000 acre feet, nor shall credits for releases to fill said ponds, exclusive of Mehrton Reservoir, be given at a greater rate than 20,000 acre feet per month.

Seventh. The division of the cost of said storage dam at Mehrton and of said collapsible dams for ponding purposes, between the defendants East Bay Municipal Utility District and Pacific Gas and Electric Company shall be determined by the Court and provision shall be made by decree for deposit with the Trustee designated by the Court of \$661,800.00 to be invested in bonds yielding 4 $\frac{1}{2}$ % return; the fund so created and interest to be used by said Trustee as needed, to pay for the cost of constructing said Mehrton Reservoir and five collapsible dams over a period of forty years and for the continued operation, maintenance and replacement of said dams.

Eighth. Said judgement and decree shall provide that if the defendants, East Bay Municipal Utility District and Pacific Gas and Electric Company, fail to make any of said minimum water releases required or to contribute the proportionate part allocated to them respectively by the Court, of said cost, then, and in such event, the defendant or defendants failing to comply with such terms shall stand enjoined from further interference with the percolation of the waters of the Mokelumne River into and underneath the lands of the City of Lodi in which the wells serving its municipal water supply are driven.

Ninth. The Court shall retain jurisdiction of this case for the purpose of appointing and designating a Trustee and removing or substituting Trustees, as the occasion may require, to carry out the provisions of said decree hereinbefore enumerated, and in the event that any dispute arises between the parties in the administration of financing of said plan, the Court shall reserve jurisdiction to determine such controversy upon hearing and notice if and when the same arises.

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The foregoing Resolution No. 669 was thereupon adopted by the following vote :

AYES: Councilmen, Weihe, Keagle, Clark, Spooner  
NOES: Councilmen, None.  
ABSENT: Councilman, Steele.

No further business appearing, the Council adjourned on motion of Councilman Weihe.

*J. R. Buckley*  
City Clerk

Approved: *G. M. Steele* Mayor.